HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 678 of 2001
(Old No. 7691 of 1986)

Brijendra Singh Pundir
Niyab Tehsildar Tharali
District Chamoli at present
Posted Tehsildar Yatra
Badrinath District Chamoli .....Applicant

Versus

1. State of Uttaranchal
2. Smt. Ratooli Devi
W/o late Modho Singh
R/o village Ghash West Circle
Jain Bist, Tehsil Karanprayag
District Chamoli .....Respondents

Sri L. K. Tiwari learned counsel for the applicant.
Sri Ganesh Kandpal learned counsel for the respondent No.2.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the proceedings of criminal case No.164/1986 Ratooli Devi Vs. Vijay Singh & others pending before the Munsif Magistrate, Karanprayag, Chamoli.

2. The factual matrix of the case is that the respondent No.2-Smt.Ratooli Devi filed a complaint under section 302/342/34/109/166 IPC against the ten accused persons mentioned in the complaint. It was further alleged that ten accused persons mentioned in the complaint have killed her husband. Smt. Ratooli Devi examined herself under section 200 Cr.P.C. and the statements of Nain Singh, Hukum Singh, Devi Singh, Bhajan Ram, Aan Singh, Padam Singh, Jai Singh and Dr. Ramesh Chandra were recorded under section 202 Cr.P.C. Thereafter, the learned Magistrate summoned the applicant-Brijendra Singh Pundir and two others,

namely Pancham Singh Patwari and Surendra Singh, the then Deputy Superintendent of Police vide order dated 31.05.1986. The Magistrate also summoned the applicant who was not named in the complaint as well as in the statements recorded under Sections 200 & 202 Cr.P.C.

3. Learned counsel for the applicant contended that the name of the applicant had not been mentioned in the complaint as well as in the statements recorded under sections 200 & 202 Cr.P.C. There is no whisper in the said complaint with regard to the participation of the present applicant. It has come only in the evidence of Hukum Singh that the Naib Tehsildar and Kanoongo were present at 'Ghadhera', even then no name has been mentioned in his statement. Perusal of the said statement does not reveal that the applicant was associated with the offence. It was pointed out that there was no name of the present applicant in the complaint as well as in the statements. The learned Magistrate had brought his name on his own information and as such the order is bad in law. Learned counsel for the respondent No.2 also conceded that the complaint was not filed against the applicant and his name has not been mentioned in any of the evidence. There is one statement in which the words "Naib Tehsildar" and 'Kanoongo' have been mentioned. Perusal of the record reveals that the name of the applicant has been arrayed as accused by the Magistrate himself. It is very surprising that the Magistrate has summoned the applicant without having any evidence against the applicant. Therefore, the order against the applicant is bad in law. As such, the proceedings against the applicant are liable to be quashed.

4. In view of the above, the petition is allowed. Therefore, the proceeding of criminal case No.164/1986 Ratooli Devi Vs. Vijay Singh & others pending before the Munsif Magistrate, Karanprayag, Chamoli are quashed only against the applicant-Brijendra Singh Pundir. So far as the proceedings against the other accused are concerned, the court below shall proceed against the other accused.

(J.C.S. Rawat, J.)

Dated 18.04.2006

LSR